

AMENDMENTS TO THE DRAWINGS

Figures 1-4 are amended to correctly show the attachment ring.

Attachments: Four (4) Replacement Sheets

REMARKS

Summary Of The Office Action & Formalities

Status of Claims

Claims 1-15 are all the claims pending in the application. By this Amendment, Applicant is amending claims 1, 2, 3, 6, 7, 8 and 13, canceling claims 10, 12, 14 and 15, and adding new claims 16 and 17. No new matter is added.

Additional Fees

Submitted herewith is a Petition for Extension of Time with fee with fee.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The Examiner states:

The drawings must show every feature of the invention specified in the claims. Therefore, the relationship between the dispensing unit 20, the over-molded neck seal 18, the reception profile 17, and the neck 19 must be shown properly, depending upon the response of the Applicant to the U.S.C. 101 rejection relating to the second embodiment (b) below. These features must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Office Action at page 2.

Applicant disagrees that the drawings are objectionable for the reasons stated above. As the Examiner's objection is premised on the rejection under 35 U.S.C. § 101, Applicant addresses the drawing objection in its response to the Section 101 rejection below.

Claim Rejections - § 101

Claims 1-15 are rejected under 35 U.S.C. § 101 because the disclosed invention is inoperative and therefore lacks utility.

The claims all depend from independent claims 1 and 13, which both claim that the claimed device must have at least one of

two features, the second one being a “(b) a neck seal over molded on the neck of the reservoir.” After reviewing the term “over molding” in an online- technical dictionary, and comparing it to the 71 references in class 222 that use the word “over molding” or a variant thereof, the Examiner believes that this embodiment is inoperative because the dispensing unit and neck seal can not be over-molded onto the reception profile and the reservoir as shown in figure 4.

First, “over molding” is a manufacturing process whereby two types of materials are molded to one another by either A) molding them both at the same time in the same mold or more commonly B) a hard material is cast first, and then it is placed in a mold, and then a second softer material is “over molded” over it to complete the mold, thereby creating a very good seal in between. A common example is a metal screwdriver bought in any hardware store that has some soft grip rubber over-molded onto it so as to seal well and fit like a glove on the metal shaft or hard plastic hilt. Second, after reviewing the specification provided by the Applicant, and further reviewing the original set of claims examined, it appears that the Applicant contemplated this device being formed by a dual injection blow molding process (claim 7, original claims dated 12/5/2006). Third, after reviewing the drawings, it appears that the Applicant depicts that the dispensing unit 20 and the neck seal 18 are one piece (see figure 4), that the reservoir 10 and its neck 19 are a second piece, and finally that the reception profile 17 appears to be a third piece. Furthermore, the reservoir 10, 19 has a hole in it 15 for an orifice that will support a filter 50.

After reviewing these three observations, the Examiner does not believe that the drawings, the specification, and the claims can all be correct and also describe an operable device. The Examiner believes that this device, as written and described, will not work because 1) over molding is limited to two materials in one mold, and so if the reception profile 17 is a third material, then it is not an over molding process, aside from the obvious concern of whether it is two over molding operations in a row, one first to cast the reservoir 10, 19, then over mold the reception profile 17, and then finally do a second over molding process for the neck seal 18. 2) if the reception profile is actually the same material and is molded at the same time as the neck seal 18, the drawings are very misleading, and leave the average person with the mistaken belief that the reception profile 17 and the neck seal 18 are different materials. 3) the dispensing unit 20 and the neck seal 18 are shown as a unified piece, one single piece that is presumably over molded

around the reservoir and neck 10, 19; this is next to impossible because the dispensing unit 20 is claimed in the original independent claim 1 to be a pump (original claim 1, line 2, dated 12/5/2006), and if so, there is no way to injection mold all the little pieces that make up a working pump so that it will seat onto a reservoir 10, 19 and create a device that could work.

The Examiner is reduced to guessing at what the second embodiment actually entails. The Examiner's best guess is that the reservoir and neck 10, 19 is blow molded first so that an orifice 15 can be created. Then the dispensing unit 20 or pump 20 is fitted into the reservoir opening 19 as tightly as possible. This combined device is placed in an over molding device. Finally, the neck seal 19 and the reception profile 17 are over molded out a soft rubber that seals the neck very well.

In light of the inoperative status of the claims that depend from the "(B) embodiment, the claims were interpreted as best as possible in order to expedite the prosecution of this application.

The drawings, the specification, and the claims simply do not depict that best guess of the Examiner, and so the second embodiment "(b)" is rejected as inoperable, and a lack of rejections of the second embodiment based on prior art references should not be construed to indicate patentable subject matter.

Office Action at pages 3-5. Applicant respectfully disagrees.

The Examiner's Section 101 rejection is premised on a mischaracterization of the structure. The dispensing unit (e.g., the pump or valve) is **not** one piece with the neck seal. Rather, as shown in Fig. 4 and in the remaining figures, the neck seal is clearly a separate element. Note, for example, the separate cross-hatching (Figs. 1 and 2) and stippling (Figs. 3 and 4) for the neck seal. In Figs. 3 and 4, the neck seal is further identified by reference number 18. On the other hand, the reception profile 17 **is part of the reservoir**, as also clearly shown in the Figs. 3 and 4.

There is one aspect of the drawings that needs clarification. The fixing ring, which mounts the dispensing unit on the reservoir, incorrectly appears in the drawings as being one

single piece with the dispensing unit. However, it is clearly explained in the specification that the pump may be fixed on the reservoir by an attachment ring (*see* p. 4, l.29-30). Applicant, therefore, encloses amended drawings properly showing the ring and providing a reference numeral for this element.

The Examiner is requested to telephone the undersigned attorney to further discuss this matter should there remain any issue regarding the Section 101 rejection or the drawings.

Claim Rejections - § 112

Claims 12 and 15 are rejected under 35 U.S.C. § 112, second paragraph, for the reason set forth at pages 5 and 6 of the Office Action.

Applicant is amending the claims to overcome this rejection.

Art Rejections

1. Claims 1, 4, 9-11, 13 and 14 are rejected under 35 U.S.C. § 102(b) as being anticipated by Pozzi (US 6,354,469).
2. Claims 1, 2, 7, 8, 12, 13 and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bougamont, et al. (US 2003/0150882 (Bougamont)).
3. Claims 2 and 3 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Pozzi in view of Maerte (US 4,830,284).
4. Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Pozzi in view of Shiraishi, et al. (US 2002/0130139 (Shiraishi)).
5. Claim 6 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Pozzi.

Applicant respectfully traverses.

Claim Rejections - 35 U.S.C. § 102

1. Claims 1, 4, 9-11, 13 and 14 In View Of Pozzi (US 6,354,469).

In rejecting claims 1, 4, 9-11, 13 and 14 in view of Pozzi (US 6,354,469), the grounds of rejection state:

Pozzi in figures 1-8 discloses a fluid product dispensing device (see figure 1) with a reservoir 15 made of plastic (col. 7, lines 65-68) to hold fluid product 20 by means of a manually actuated pump 3, 14, 33 that dispenses product 20 contained within the single piece reservoir 15 that has an orifice 19, 22, that is adapted to hold a press fitted filter 26 that allows air into the reservoir 15 via a check valve 17 when the pump 3, 14, 33 is actuated. Although Pozzi does not explicitly recite that its plastic container is made by injection blow molding

Office Action at page 6.

Claim 1 is amended to include the feature of claim 2 and remove the feature of “a neck seal over moulded on the neck of the reservoir.” Likewise, claim 13 is amended to recite that “at least a first radial projection cooperating with the dispensing head to prevent the head from being torn off,” and to delete “a neck seal formed by over moulding on the neck of the reservoir.”

As claim 2 was not rejected in view of Pozzi, alone, this rejection is now moot.

Claim Rejections - 35 U.S.C. § 103

1. Claims 1, 2, 7, 8, 12, 13 and 15 Over Bougamont, et al. (US 2003/0150882 (Bougamont)).

In rejecting claims 1, 2, 7, 8, 12, 13 and 15 over Bougamont, et al. (US 2003/0150882 (Bougamont)), the grounds of rejection state:

Bougamont in figures 2-2C discloses a fluid product dispenser (see figure 2A) with a reservoir R containing a fluid product (paragraph 0025) with a pump P that dispenses the product of the fluid reservoir with a dispensing head K to actuate the pump P the reservoir R is a single piece with (this is embodiment “b”) a neck seal J with a raised ring or bump R (see figure 2A) for the seal J to serve as a reception profile for the seal J that is held in

place by the ferrule D. Although Bougamont is not manufactured by an over molding process, this is not necessary to reject the above claims.

Applicant should note that the claims are directed to a device/product, not the process of making such. Even though product-by-process claims are limited by and defined by the process, determination of patentability is *based on the product itself*. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Applicant claims “over moulded “ in claims 1, 12-13 and 15, and the “dual injection blow molding” in claim 7. The manner in which the device is made/formed is given little or no weight. Further, it would have been obvious to form these products by these methods as they are well known manufacturing methods. The method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

Office Action at pages 7-8.

The grounds of rejection do not allege that Bougamont discloses, nor in fact does this document disclose or even suggest, the “at least a first radial projection cooperating with the dispensing head to prevent the head from being torn off,” as recited in claims 1 and 13.

One advantage associated with this feature is that when the orifice is in the vicinity of the radial projection (see, e.g., Figs. 2 and 4), the orifice and the filter are not visible from the outside, being covered by the head.

For at least the foregoing reason, claims 1 and 13 and claims dependent therefrom are believed to be patentable over Bougamont.

2. Claims 2 and 3 Over Pozzi in view of Maerte (US 4,830,284).

In rejecting claims 2 and 3 over Pozzi in view of Maerte (US 4,830,284), the grounds of rejection state:

Pozzi has all of the elements of claims 2-3 except for the reservoir having a first radial projection and an axially aligned second radial projection that serve to retain the dispensing head as it actuates, and to create starting and stopping points for actuation. Maerte in figure 1 teaches a dispensing head 31 that is retained on the reservoir 12, 14, by a first radial projection 33 that is axially aligned with a second radial projection shoulder 12 that serve as starting and stopping points for the dispensing head's 31 actuation. It would be obvious to one of ordinary skill in the art to adapt Maerte to Pozzi because Maerte teaches a well understood and reliable way to control the actuation cycle of the dispenser.

Office Action at page 8.

Here too, neither Pozzi nor Maerte discloses or suggests the “at least a first radial projection cooperating with the dispensing head to prevent the head from being torn off,” as recited in claims 1 and 13.

While Maerte discloses projections to avoid removal of the head, these projections are not made on or otherwise part of the reservoir, but are part of the fixing ring. Further, the prior art does not disclose any disadvantage in connection with this configuration so as to encourage one skilled in the art to place the projection elsewhere.

Accordingly, even if Maerte is considered together with Pozzi, which discloses an opening with a filter at the bottom of the reservoir, there is no indication or rationale for providing the projections directly on the reservoir, rather than on the fixing ring or other element assembled on the reservoir.

3. Claim 5 Over Pozzi in view of Shiraishi, et al. (US 2002/0130139 (Shiraishi)).

In rejecting claim 5 over Pozzi in view of Shiraishi, et al. (US 2002/0130139 (Shiraishi)), the grounds of rejection state:

Pozzi has all of the elements of claim 5 except for the orifice that holds the filter is located in the sidewall of the reservoir. Shiraishi in figures 1-10 teaches a hole 4 in the sidewall

of the reservoir 2 that serves to allow air to enter between the rigid outer container 21 and the pliable bag 22. It would be obvious to one of ordinary skill in the art to adapt the hole of Shiraishi to the Pozzi reservoir in order to re-locate the receiving hole for the inlet air filter to the sidewall of Pozzi because Shiraishi teaches the use of a location that is easier to protect from damage because it is not on the bottom of the reservoir and further it is protected to a point by the collar and pump apparatus of the Pozzi device.

Office Action at pages 8-9.

Without further commenting on the grounds of rejection of claim 5, this claim is believed to be allowable at least by reason of its dependency.

4. Claim 6 Over Pozzi.

In rejecting claim 6 over Pozzi, the grounds of rejection state:

Pozzi explicitly has all of the elements of claim 6 including a reservoir made of synthetic material, but does not explicitly teach that the reservoir is made by injection blow molding.

Applicant should note that the claims are directed to a device/product, not the process of making such. Even though product-by-process claims are limited by and defined by the process, determination of patentability is *based on the product itself*. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Applicant claims that the reservoir is “made by injection blow molding” (claim 6, line 2). The manner in which the device is made/formed is given little or no weight. Further, it would have been obvious to form this product by this method as it is a well known manufacturing method. The method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

Office Action at pages 9-10.

Without further commenting on the grounds of rejection of claim 6, this claim is believed to be allowable at least by reason of its dependency.

New Claims

For additional claim coverage merited by the scope of the invention, Applicant is adding new claims 16 and 17, which are allowable at least by reason of their respective dependencies.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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